

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1496-01
Bill No.: HB 519
Subject: Business and Commerce; Environmental Protection; Natural Resources Dept.
Type: Original
Date: April 11, 2003

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Total Estimated Net Effect on Other State Funds	\$0	\$0	\$0

Based on the February 27, 1995 vote of the Oversight Subcommittee on a similar proposal, all fiscal impact to the state and federal funds have been removed to reflect a \$0 impact.

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 5 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Local Government			

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Labor and Industrial Relations, Office of State Courts Administrator, Department of Transportation** and the **State Auditor's Office** assume the proposed legislation would have no fiscal impact on their agencies.

In response to similar legislation from 2002, officials from the **Office of the Attorney General** assume that there may be additional litigation resulting from this proposal and therefore costs are unknown.

Officials from the **Department of Natural Resources (DNR)** encourages increased environmental self-vigilance to ensure compliance with state and federal permit requirements; however, the department is unable to determine the fiscal impact of this bill. Since this legislation, which includes an evidentiary privilege must know about certain existing noncompliance with environmental laws and regulations exist at this time. Therefore, DNR cannot estimate the increased resources that would be needed to assist privileged facilities return to compliance if they avail themselves of the immunity provision of this legislation.

If there is probable cause to believe a criminal offense has been committed, the state may obtain the environmental audit report pursuant to discovery as allowed by the Missouri

ASSUMPTION (continued)

supreme court rules. However, probable cause cannot be based upon information from the audit report, and the state has the burden to prove the information came from a source independent of an environmental audit report.

After obtaining the report, the state cannot review or disclose its contents until a court so orders or the facility waives the privilege. The department assumes that we will be obtaining the environmental audit reports and related information for retention. We have not included the costs of development of procedures, staff required to safeguard files, and the actual storage facilities for these confidential files because we do not know the magnitude of an unregulated noncompliance.

DNR's research indicates that regulatory agencies rarely use voluntary audit reports in enforcement cases. Therefore, at this time, the department is not requesting additional legal services associated with the additional work that would result from obtaining the environmental audit report. However, DNR believes this will directly affect the Attorney General's Office in cases they litigate for the department.

This legislation provides circumstances when the DNR is prohibited from imposing any administrative, civil or criminal penalties on a facility if the facility discovers noncompliance through a voluntary audit and voluntarily discloses the information to DNR. It should be noted that this section conflicts with other state and federal laws related to penalties for environmental violations. Therefore, this provision weakens the state's enforcement provisions and conflicts with federal enforcement policies in addition, serious environmental impacts or threats to human health and safety from the actions of a company (e.g. dumping hazardous materials causing ground water contamination), some of which could be criminal in nature, could result if the department does not have the ability to seek penalties. The company could potentially allow the noncompliance to continue for an indefinite amount of time and then makes a "voluntary disclosure" of privileged information thereby precluding any penalty assessment.

The department believes this action could be possible grounds for the Environmental Protection Agency (EPA) to revoke the department's authority/delegation of the related environmental programs. This means the state of Missouri will lose "primacy" in the related environmental programs and Missouri constituents will have to deal directly with the EPA in issues involving permitting and enforcement activities. If the EPA authorization is completely withdrawn, the

department will also lose the related federal funds which exceed \$100,000,000 annually. These federal funds provide support to programs such as the department's State Revolving Fund for improvements to water and wastewater facilities; the clean-up of Superfund and LUST sites; and the department's permit, inspection, and enforcement activities.

ASSUMPTION (continued)

Based on the February 27, 1995 vote of the Oversight Subcommittee on a similar proposal, all fiscal impact to the state and federal funds have been removed to reflect a \$0 impact.

<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

The environmental audit report is a voluntary action undertaken by interested businesses. Regardless of whether they have an environmental audit report or not, the small businesses would still be required to be in compliance with the state statutes.

DESCRIPTION

This bill creates an audit privilege for owners of facilities regulated by environmental law. Owners may conduct a voluntary internal audit designed to determine compliance with environmental laws. Information obtained in the audit is privileged and not admissible as evidence in any legal action or subject to disclosure during regulatory inspections. A court or administrative body may require disclosure if the privilege is asserted for fraudulent purposes or if the audit indicated noncompliance with environmental law and the owner did not reasonably pursue compliance. The privilege does not apply to data collected as required by law or to data collected by a regulatory agency or independent source. Public employees who divulge

information subject to the privilege are guilty of a class A misdemeanor.

The bill also prohibits the Department of Natural Resources from seeking any administrative or civil penalties, or any criminal penalties for negligent acts, from anyone who voluntarily discloses an environmental violation discovered in an environmental audit. To qualify, the owner must make the disclosure promptly and correct the violation within two years. The prohibition

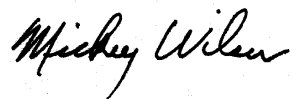
DESCRIPTION (continued)

against penalties does not extend to those who have committed serious, repeated violations within the last three years.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Natural Resources
Department of Labor and Industrial Relations
Office of Attorney General
Office of State Courts Administrator
State Auditor's Office
Department of Transportation



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Director
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